

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE: THE GENERAL  
ADJUDICATION OF RIGHTS TO  
THE USE OF WATER FROM THE  
COEUR D'ALENE-SPOKANE  
RIVER BASIN WATER SYSTEM

)  
) Case No: 49576  
)  
) COMMENCEMENT ORDER FOR  
) THE COEUR D'ALENE-SPOKANE  
) RIVER BASIN GENERAL  
) ADJUDICATION  
)  
)  
)

I.  
BRIEF PROCEDURE

The State of Idaho initiated the above-captioned matter pursuant to I.C. § 42-1406B (Supp. 2008) by the filing of a petition to commence an adjudication of the Coeur d'Alene-Spokane River Basin water system ("*Petition*") on July 8, 2008. The State of Idaho also filed on that same date a *Stipulation for Establishment of Procedure for the Adjudication of Domestic and Stock Water Claims* ("*Stipulation*") entered into between the State of Idaho and the United States regarding procedures for the adjudication of *de minimis* domestic and stockwater claims as defined by Idaho Code § 42-1401A (4) and (11). The commencement hearing on the *Petition* was held in Coeur d'Alene, Idaho on August 28, 2008. The Court having issued a *Memorandum Decision on Petition to Commence Coeur d'Alene Spokane River Basin General Adjudication* concurrently with this *Commencement Order for the Coeur D'Alene-Spokane River Basin General Adjudication* ("*Commencement Order*"), makes the following findings of fact and

COMMENCEMENT ORDER FOR THE COEUR D'ALENE-SPOKANE RIVER BASIN  
GENERAL ADJUDICATION

conclusions of law based on the record of the commencement hearing and enters its **Order** as follows.

## II. FINDINGS OF FACT

1. On behalf of the Director (“Director”) of the Idaho Department of Water Resources (“IDWR”), IDWR prepared a notice of filing of a petition for the general adjudication (“*Notice of Filing*”) that contained the information and enclosures required by Idaho Code § 42-1407 (3). IDWR served a copy of the *Petition, Stipulation* and *Notice of Filing* on the State of Idaho, the United States, the Idaho Department of Water Resources and Indian tribes either residing or possibly having interests within the boundaries of the Coeur d’Alene-Spokane River Basin water system, including:

Shoshone-Paiute Tribes	Kootenai Indian Tribe
Coeur d’Alene Tribe of Indians	Nez Perce Tribal Executive Committee
Shoshone-Bannock Tribes	Kalispel Tribe
Spokane Tribe of Indians	Confederated Tribes of the Colville
Confederated Salish &	Reservation
Kootenai Tribes	

2. IDWR published the *Notice of Filing* for (3) three consecutive weeks in newspapers of general circulation including:

Bonner County Daily Bee	Clearwater Tribune
Coeur d’Alene Press	The Moscow-Pullman Daily News
Priest River Times	Shoshone News-Press
St. Maries Gazette Record	

The last day of publication for each, being not less than twenty (20) days before the date set for the commencement hearing.

3. IDWR filed an *Affidavit of Service* on August 27, 2008.

4. The Court held the commencement hearing on August 28, 2008, in Coeur d’Alene, Idaho.

5. Notices of appearance were entered by the following:

**COMMENCEMENT ORDER FOR THE COEUR D’ALENE-SPOKANE RIVER BASIN  
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Edward F. Anderson, *pro se*;

Brian J. Cleary, The Cleary Law Group, P.C., on behalf of the Coeur d'Alene Indian Tribe;

Peter C. Monson, United States Department of Justice, on behalf of the United States;

Attorney General Lawrence Wasden; David I. Stanish, Idaho Attorney General's Office, on behalf of the State of Idaho;

6. This Court issued a *Memorandum Decision on Petition to Commence Coeur d'Alene Spokane River Basin General Adjudication* concurrently with this *Order*.

### **III. CONCLUSIONS OF LAW**

Based upon the findings of fact in this matter, the Court makes the following conclusions of law.

1. The *Notice of Filing* complied with the requirements of I.C. § 42-1407.
2. The Director complied with I.C. § 42-1407 in service and in publication of the *Notice of Filing*.
3. The deferral procedure for the adjudication of domestic and stockwater rights as defined by Idaho Code 42-1401A (4) and (11) as set forth in the *Stipulation* complies with the terms of the McCarran Amendment, 42 U.S.C. § 666.

### **IV. ORDER**

Based on the findings of fact and conclusions of law and on the record in this matter, the Court enters the following order:

IT IS HEREBY ORDERED THAT:

**COMMENCEMENT ORDER FOR THE COEUR D'ALENE-SPOKANE RIVER BASIN  
GENERAL ADJUDICATION**

1. Pursuant to I.R.C.P. 52(a) the *Memorandum Decision on Petition to Commence Coeur d'Alene Spokane River Basin General Adjudication* issued concurrently herewith is adopted as further findings of fact and conclusions of law.

2. The Coeur d'Alene-Spokane River Basin Adjudication is commenced as authorized by I.C. § 42-1406B (Supp. 2008) as a general adjudication *inter se* of all rights arising under state or federal law to the use of surface and ground waters from the Coeur d'Alene-Spokane River Basin water system within the state of Idaho.

3. The boundaries of the Coeur d'Alene-Spokane River Basin water system to be adjudicated are as follows:

All of the water system being upstream between the state line of Idaho and Washington and the state line of Idaho and Montana beginning in the west part of the water system where the county line of the counties of Benewah and Latah meet the state line of Washington and Idaho at a point in the southwest corner of Section 25, Township 44 North, Range 6 West, B.M., then following said Idaho and Washington border north to a point on the state line of Idaho and Washington on a ridge line in Government Lot Two (2) that is otherwise approximately the southwest quarter of the northwest quarter (SW1/4NW1/4) of Section 12, Township 54 North, Range 6 West, B.M., then continuing generally easterly from each of those respective state line points along ridge lines and mountain peaks to the Idaho and Montana border, such that the water system includes all surface water and ground waters of the Hangman Creek drainage before such waters reach Washington, the Rock Creek drainage before such waters reach Washington both of which creeks are tributaries of the Spokane River, the St. Maries River drainage, the St. Joe River drainage, each river basins of which is wholly within Idaho, the Coeur d'Alene River drainage, most of which is in Idaho except two small tributary basins in the state of Washington, the Spokane River drainage before such waters reach Washington, the waters flowing and sinking into the Rathdrum Prairie Spokane Valley Aquifer before such waters reach Washington, the Salee Creek drainage, and the Bayview Creek drainage, both of which are near Lake Pend Oreille, but the water system does not include the waters of Lake Pend Oreille, Hoodoo Creek, or Cocolalla Creek that are tributaries of the Pend Oreille River Drainage.

A map showing the boundaries of the water system is set forth in **Exhibit 1**, which is attached hereto and incorporated herein by reference. All waters in the state of Idaho within the boundaries set forth above are included in this adjudication.

**COMMENCEMENT ORDER FOR THE COEUR D'ALENE-SPOKANE RIVER BASIN  
GENERAL ADJUDICATION**

4. Counties partly located within the boundaries of the water system include the following:

Kootenai	Benewah
Latah	Bonner
Clearwater	Shoshone

5. All classes of water users and all hydrologic sub-basins within the system described in paragraph 3 above, shall be adjudicated as part of the Coeur d'Alene-Spokane River Basin Adjudication.

6. No uses of water are excluded from the adjudication. However, it is possible to defer the adjudication of *de minimis* domestic and stockwater rights as defined by Idaho Code § 42-1401A (4) and (11) as set forth in the *Stipulation*, within the terms of the McCarran Amendment. The procedures for adjudicating *de minimis* domestic and stock water claims shall as set forth in the ***Order Establishing Procedures for the Adjudication of De Minimis Domestic and Stockwater Uses in the Coeur d'Alene-Spokane River Basin Adjudication*** issued in the above-captioned matter, a copy of which is attached hereto as **Exhibit 2** and incorporated herein by reference.

7. All claimants asserting rights to the use of surface and ground waters under state law from the above-described water system, including pursuant to state license, historic use, federal or state court decree and holders of permits for which proof of beneficial use was filed on or prior to the date of entry of this ***Commencement Order for the Coeur d'Alene-Spokane River Basin Adjudication*** ("***Commencement Order***"), shall file a notice of claim with the director as provided in Idaho Code § 42-1409 (Supp. 2008), unless claimants elect to defer the adjudication of domestic and stock water rights as defined by subsections (4) and (11) of Idaho Code 42-1401(A). All claimants asserting rights to the use of surface and ground waters under federal law from the above-described water system shall file a notice of claim as required by the *Notice of Order Commencing a General Adjudication* prepared by the Director or as otherwise ordered by the Court, unless claimants elect to defer the adjudication of domestic and stock water rights as defined by subsections (4) and (11) of Idaho Code § 42-1401(A).

8. The Director is authorized to prepare the *Notice of Order Commencing a General Adjudication* "*Notice of Order*" in accordance with I.C. § 42-1408 (1). The **COMMENCEMENT ORDER FOR THE COEUR D'ALENE-SPOKANE RIVER BASIN GENERAL ADJUDICATION**

Director shall serve the *Notice of Order* as provided in I.C. § 42-1408 (2) (a)-(e) and send a *Notice of Order* by ordinary mail to all persons who submit a written request to the Director as required by I.C. § 42-1408 (3). The Court approves the Director's proposed method for conducting second round service as required by I.C. § 42-1408 (4).

9. The Director shall commence an investigation of all uses of water from the system in accordance with Idaho Code § 42-1410 and file a report in accordance with Idaho Code § 42-1411.

10. The Director shall file with the Court affidavits of service and other documents stating the persons served with a copy of the *Notice of Order*. The affidavits shall contain the address used for service for each person served.

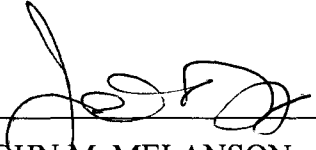
11. The Clerk of the District Court shall send a certified copy of this ***Commencement Order*** to the Director, and shall send a conformed copy to all persons appearing before the Court at the commencement hearing in accordance with the Idaho Rules of Civil Procedure.

V.

**RULE 54(b) CERTIFICATE**

With respect to the issues determined by the above judgment or order it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Dated December 12, 2008

  
\_\_\_\_\_  
JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication

**COMMENCEMENT ORDER FOR THE COEUR D'ALENE-SPOKANE RIVER BASIN  
GENERAL ADJUDICATION**

## CERTIFICATE OF MAILING

I hereby certify that true and correct copies of the **COMMENCEMENT ORDER FOR THE COEUR D'ALENE-SPOKANE RIVER BASIN GENERAL ADJUDICATION** were mailed on November 12, 2008, by first-class mail to the following:

Director, Idaho Department of Water Resources  
PO Box 83720  
Boise, ID 83720-0098

Office of the Attorney General  
State of Idaho  
PO Box 44449  
Boise, ID 83711-4449

United States Department of Justice  
Environment & Natural Resources Div.  
550 West Fort Street, MSC 033  
Boise, ID 83724

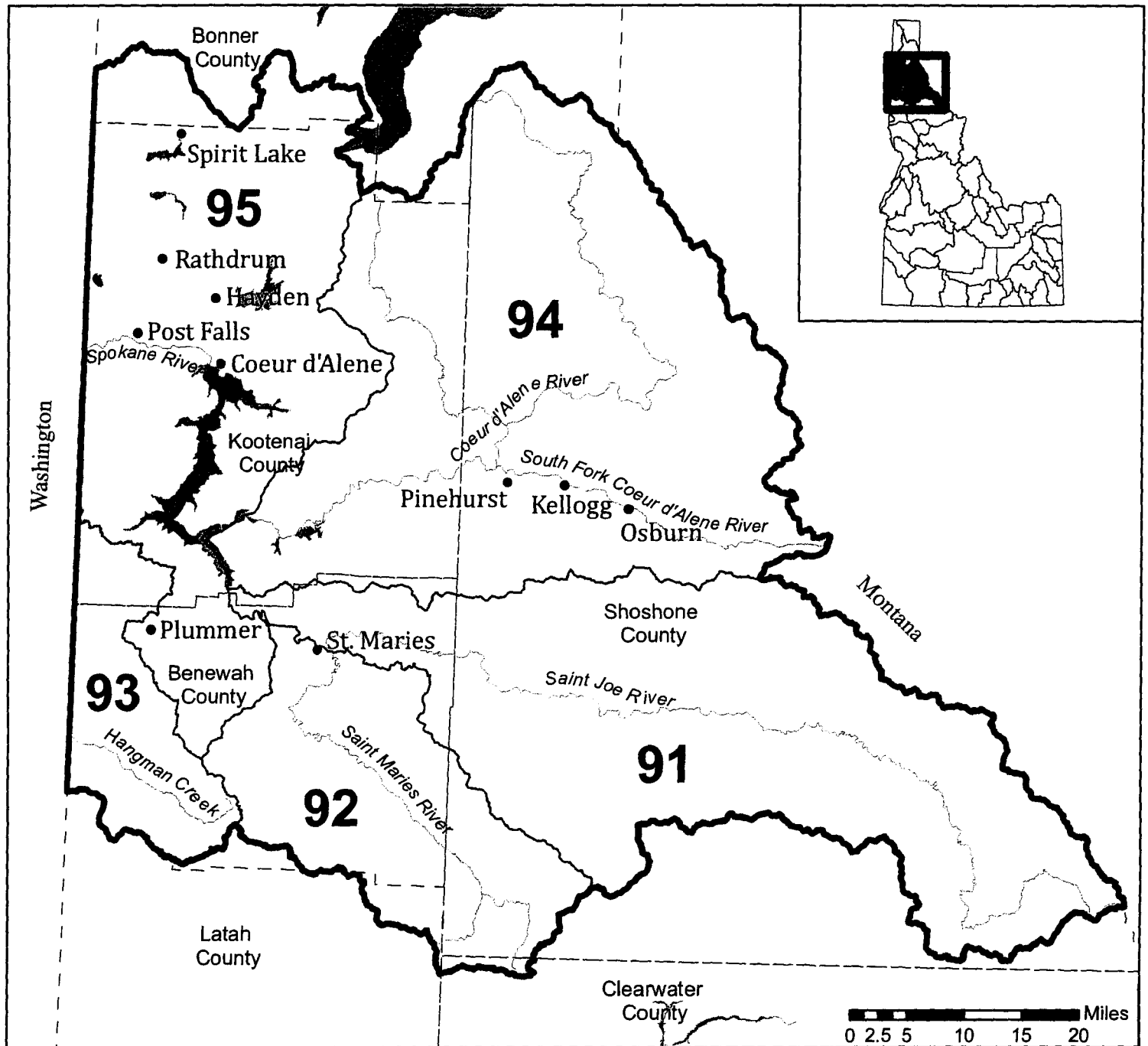
Coeur d'Alene Tribe  
Represented by:  
Brian J. Cleary  
The Cleary Law Group, P.C.  
101 West Prairie Center, #362  
Hayden, ID 83835

Edward F. Anderson  
PO Box 327  
Kingston, ID 83839

  
Julie Murphy  
Deputy Clerk

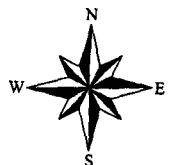
# Northern Idaho Adjudication

## Coeur d'Alene - Spokane River Basin Water System

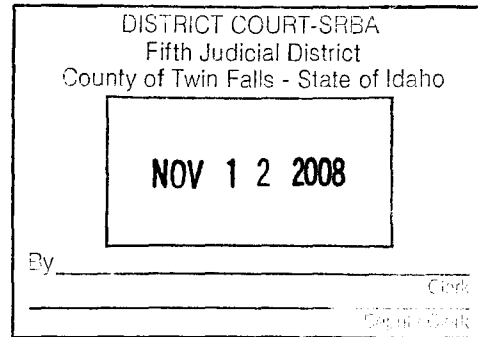


### Legend

- Cities
- Coeur d'Alene - Spokane River Basin Water System Boundary
- - - County Boundaries
- IDWR Administration Basins Boundaries







IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE: THE GENERAL  
ADJUDICATION OF RIGHTS TO  
THE USE OF WATER FROM THE  
COEUR D'ALENE-SPOKANE  
RIVER BASIN WATER SYSTEM

)  
) Case No: 49576  
)  
) ORDER ESTABLISHING  
) PROCEDURES FOR THE  
) ADJUDICATION OF *DE MINIMIS*  
) DOMESTIC AND STOCKWATER  
) CLAIMS IN THE COEUR D'ALENE-  
) SPOKANE RIVER BASIN  
) ADJUDICATION  
)  
)

Pursuant to the *Stipulation for Establishment of Procedure for the Adjudication of Domestic and Stock Water Claims* ("Stipulation") entered into between the State of Idaho and the United States regarding the deferral of *de minimis* domestic and stockwater claims and filed in the above-captioned matter; the *Memorandum Decision on Petition to Commence Coeur d'Alene Spokane River Basin General Adjudication* and the *Commencement Order for the Coeur d'Alene-Spokane River Basin Adjudication* entered in the above-captioned matter; the following procedures are ordered for Case No. 49576, *In Re: The General Adjudication of the Rights to the use of Water from the Coeur d'Alene-Spokane River Basin Water System* ("CSRBA"):

ORDER ESTABLISHING PROCEDURES FOR THE ADJUDICATION OF *DE MINIMIS*  
DOMESTIC AND STOCKWATER CLAIMS IN THE COEUR D'ALENE-SPOKANE RIVER  
BASIN ADJUDICATION

**I.**  
**DEFERRAL PROCEDURE FOR *DE MINIMIS* DOMESTIC AND  
STOCKWATER CLAIMS**

1. All claimants of *de minimis* domestic and stock water uses as defined in Idaho Code § 42-1401A(4) and (11), (hereinafter referred to as *de minimis* claimants) shall be joined as parties in this proceeding and will be bound by all decrees entered in this case, including the final decree. Any objections which a *de minimis* claimant or any other claimant may have to any and all claims being adjudicated in this proceeding must be timely raised in this proceeding in accordance with Idaho Code § 42-1412 or be forever barred.

2. *De minimis* claimants may elect to have their claims fully adjudicated now or to postpone the adjudication of their claims by following the alternative procedure set forth in paragraph 3, *infra*. If a *de minimis* claimant elects to have his or her domestic or stock water claims (or both) fully adjudicated now, then the *de minimis* claimant must file a notice of claim as provided by Idaho Code § 42-1409 and pay any filing fees required by Idaho Code § 42-1414.

3. *De minimis* claimants may elect to defer adjudication of their claims to a later time in this proceeding; provided however, each deferred claim when finally adjudicated shall be limited to no more than those amounts and for those uses set forth in Idaho Code § 42-1401A(4) and (11) as enacted by the Act of March 24, 1997, ch 374, 1997 Idaho Sess. Laws 1192. Additionally, each *de minimis* claimant must agree to have any domestic or stock water claim decreed prior to seeking authorization from the Director to change the point of diversion, place of use, purpose of use, or period of use; provided that if any such change is for the purpose of aggregating more than one individual domestic or stock water claim, the consumptive quantity of each right to be aggregated may not exceed the lesser of that amount historically used or 13,000 gallons per day. There shall be no presumption that either the diversion requirement or the actual consumptive use for the water right to be changed was equal to 13,000 gallons per day or any other quantity greater than actual historic use. If this option is elected, a deferred *de*

**ORDER ESTABLISHING PROCEDURES FOR THE ADJUDICATION OF *DE MINIMIS*  
DOMESTIC AND STOCKWATER CLAIMS IN THE COEUR D'ALENE-SPOKANE RIVER  
BASIN ADJUDICATION**

*minimis* claimant will not be required to file a notice of claim at this time or to pay any filing fee until such time as the claimant seeks to have the deferred claim decreed.

A. Election of this procedure will not result in a loss of such *de minimis* domestic or stock water claim nor will such deferred *de minimis* claimant be precluded from establishing the requisite elements of his or her *de minimis* claim at a subsequent time using the summary procedure described herein.

B. As provided by Idaho Code § 42-604, as rights in a basin are adjudicated, the Idaho Department of Water Resources will establish water districts. If a call is made for water within a water district, the Director will administer all rights within the water district pursuant to Idaho Code § 42-607. A claimant who has elected to defer adjudication of a *de minimis* domestic or stock water claim will be required to seek a final adjudication of the claim prior to requesting distribution pursuant to Idaho Code §42-607.

C. In order to obtain an adjudicated water right, a claimant of a deferred *de minimis* domestic or stock water claim shall file a motion for determination of the claim with this court.

D. The following provisions are required to institute a determination of a deferred *de minimis* domestic or stock water claim.

1. The deferred *de minimis* claimant shall file with this district court a motion for determination of the domestic and stock water claim with an attached notice of claim on a form provided by the Director and shall serve the State of Idaho, the Director, the United States, and persons against whom relief is sought. The claimant shall also cause to be published a notice of the pendency and purpose of the motion once a week for not less than three (3) weeks in a newspaper of general circulation in the county in which the point of diversion is located or as otherwise required by the court. Service upon the United States shall be accomplished by sending a copy of the motion and claim form by certified mail to the United States Attorney for the District of Idaho and United States Attorney General in Washington, D.C.

2. Any party who objects to the claim shall, within forty-five (45) days from the date of the first publication of the notice, file with the district court written

**ORDER ESTABLISHING PROCEDURES FOR THE ADJUDICATION OF *DE MINIMIS*  
DOMESTIC AND STOCKWATER CLAIMS IN THE COEUR D'ALENE-SPOKANE RIVER  
BASIN ADJUDICATION**

notice of such objection stating the reasons for the objection. A copy of an objection shall be served on the State of Idaho, the Director, the United States, the person whose claim is being objected to, and all persons who have appeared in response to the motion.

3. The Director within thirty (30) days of the expiration of the time fixed to file an objection with the district court, shall file with the district court notification as to whether the Director will conduct an examination of the claim and whether the Director will prepare for submittal to the district court a report on the claim. The Director may commence an examination of the water system in accordance with the provisions of Idaho Code § 42-1410. Notification to the district court that a report will be prepared shall include an approximation of the time when the report will be completed, and an estimate of the Director's costs that will be incurred in conducting the examination and in preparing the report. A deferred *de minimis* claimant shall then be required to advance to the Director the estimated costs of conducting the examination and of preparing the report. Prior to the filing of the report with the district court, the deferred *de minimis* claimant shall pay the balance of the Director's verified costs or be refunded any unused estimated costs advanced to the Director. In the event the deferred *de minimum* claimant shall contest the Director's costs, the district court shall then determine a reasonable cost to be paid by the deferred *de minimis* claimant.

4. The deferred *de minimis* claimants shall be required to pay the following additional costs and expenses of the proceeding: Any filing fees of the claimant, and costs of publication. Pursuant to 43 U.S.C. § 666 no judgment for costs shall be assessed against the United States.

5. The Director shall file the report with the district court upon completion and shall send a copy of the report to the United States, to all parties who filed objections, and to all persons against whom relief is sought. Objections to the report of the Director, responses to the objections, and hearing upon the objections shall be in accordance with the provisions of Idaho Code § 42-1412.

6. For those cases in which the Director notifies the district court that the Director does not intend to prepare a report, the district court will proceed with a

**ORDER ESTABLISHING PROCEDURES FOR THE ADJUDICATION OF *DE MINIMIS*  
DOMESTIC AND STOCKWATER CLAIMS IN THE COEUR D'ALENE-SPOKANE RIVER  
BASIN ADJUDICATION**

hearing, and any party having filed a timely objection with the district court may appear and challenge the claim. The district court may order the Director to prepare a report following a hearing on the deferred *de minimis* claimant's motion.

7. The district court clerk shall not accept for filing any motion under this procedure unless the claimant certifies on the original document the date and the manner of service of the motion on the State of Idaho, the Director, the United States, and the persons against whom relief is sought.

8. The deferred *de minimis* claimant shall have the burdens of proof and of persuasion in establishing each and every element of his or her claim.

9. Venue for hearings on deferred domestic and stock water claims shall be in the county in which the point of diversion is located unless otherwise ordered by this district court.

E. Appeals of any orders or decrees entered under this summary procedure shall be governed by the rules applicable to appeals of orders entered in the Coeur d'Alene-Spokane River Basin Water System.

F. The district court retains continuing jurisdiction of the subject matter in this proceeding, and the parties to this proceeding, for the purpose of adjudicating deferred *de minimis* domestic or stock water claims. The district court on the motion of any party hereto, including a successor-in-interest, may adjudicate a deferred *de minimis* domestic or stock water claim under the alternative procedure set forth in this stipulation.

## **II.**

### **PROCEDURES FOR *DE MINIMIS* WATER USERS INITIALLY ELECTING TO DEFER BUT LATER DECIDING TO FILE PRIOR TO THE ENTRY OF A FINAL UNIFIED DECREE OR FURTHER ORDER OF THE COURT**

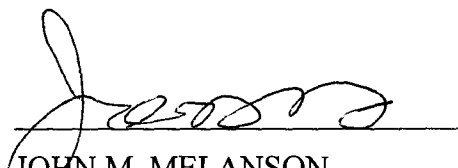
Until further order of the Court, the alternative procedure for adjudicating *de minimis* domestic or stockwater claims as set forth in paragraph 3 above is superseded by

**ORDER ESTABLISHING PROCEDURES FOR THE ADJUDICATION OF *DE MINIMIS* DOMESTIC AND STOCKWATER CLAIMS IN THE COEUR D'ALENE-SPOKANE RIVER BASIN ADJUDICATION**

the following procedure. Water users who initially elected to defer the filing of a claim for a *de minimis* domestic or stockwater use and later decide to file a claim after the deadline for timely filing the claim has expired but prior to the entry of a final unified decree or other further order governing procedures for filing *de minimis* domestic or stockwater use shall follow the same procedures established in the CSRBA for filing late notices of claim, provided however, the claim will not be subject to a late filing fee.

IT IS SO ORDERED

Dated November 12, 2008



JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication

**ORDER ESTABLISHING PROCEDURES FOR THE ADJUDICATION OF *DE MINIMIS*  
DOMESTIC AND STOCKWATER CLAIMS IN THE COEUR D'ALENE-SPOKANE RIVER  
BASIN ADJUDICATION**